

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEF PEDAIN,
MANFRED BOCK and CARL-GERD DIERIS

Appeal No. 1999-1415
Application 08/784,875

ON BRIEF

Before WARREN, OWENS and WALTZ, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

The examiner has returned this application to the Board after preparing the supplemental examiner's answer of November 1, 2002 (Paper No. 12) in response to our remand of August 21, 2002 (Paper No. 11).

Our review of the supplemental answer in light of the record on appeal reveals that the examiner has apparently entered the translation of a passage from Römpp Chemie Lexicon, without an express statement on the record, and for the first time in the prosecution of this application has taken a position with respect to evidence of record relied on by appellants.

On the record now before us, we determine that in order to preserve appellants' right to due process it is necessary to accord appellants the opportunity to respond to the examiner's position and would remand the application to appellants for that purpose. *See* 37 CFR §1.196(d)

(2003); Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., August 2001; 1200-30 – 1200-31).

In this respect, we asked Ms. Cheryl Moore, a paralegal specialist of this Board, to inquire whether appellants had submitted a supplemental reply brief in response to the supplemental examiner's answer. On April 9, 2003, appellants faxed a copy of a second reply brief and of the post card evincing receipt thereof by OIPE on December 17, 2002, which copies the Board has made of record in the filewrapper (Paper No. 13).

Accordingly, we remand this application to the examiner for entry and consideration of the second reply brief originally filed by appellants on December 17, 2002. Upon consideration of the entered second reply brief the examiner must either enter a communication noting the entered second reply brief and returning the application to the Board, or take other appropriate action in light of the entered second reply brief consistent with current examining practice and procedure and inform the Board of the status of the application.

We hereby remand this application to the examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments. 37 CFR §1.196(a) (2003); MPEP § 1211 (8th ed., August 2001; 1200-29 – 1200-30).

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This application, by virtue of its “special” status, requires immediate action. *See* MPEP § 708.01(D) (8th ed., Rev. 1, Feb 2003; 700-121). It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal in this case. *See, e.g.*, MPEP§ 1211.

Remanded

CHARLES F. WARREN)	
Administrative Patent Judge)	
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TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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Administrative Patent Judge)	

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